

Regulatory relief for restoration projects

Background

In 2009, the State Legislature adopted amendments to the [Shoreline Management Act](#) (codified as [RCW 90.58.580](#)) to ensure that shoreline master program regulations designed to protect shorelines do not become an obstacle to habitat restoration. The amendments offer the opportunity for relief from Shoreline Master Program regulations in urban areas where restoration projects move the shoreline landward. The State Senate and House both unanimously approved the amendments, which had the support of environmental groups, businesses, local governments and state agencies.

In most locations, the land area [where shoreline regulations apply](#) is measured 200 feet landward from the “ordinary high water mark.” Habitat restoration projects can alter the shoreline, changing location of the ordinary high water mark and shifting the 200-foot area where shoreline regulations apply.

Potential added restrictions on land use can be a significant concern to property owners, particularly in urban areas where land use is intense and property values are high. Along the Duwamish River in Seattle and other urban rivers, added restrictions have in some cases stopped habitat restoration projects or resulted in a redesign that reduced the restoration benefits.

Where does RCW 90.58.580 apply?

This regulatory relief applies to areas brought into shoreline jurisdiction due to restoration projects that change the ordinary high water mark. . The statute acknowledges that the ordinary high water mark may be modified by projects – and that shoreline jurisdiction changes when projects modify the shoreline. [RCW 90.58.030\(2\)\(c\)](#)

Regulatory relief may be granted:

- Where a shoreline restoration project creates a landward shift in the ordinary high water mark, resulting in additional area within shoreline jurisdiction.
- Only within urban growth areas, including cities.

It does not apply where a project applicant improves shoreline habitat as required mitigation for development impacts.

What regulatory relief is provided?

Local Substantial Development Permits (SDPs) are not required

[Substantial Development Permits](#) (SDPs) are not required for development on land that is brought under shoreline jurisdiction due to a shoreline restoration project. (See [RCW](#)

[90.58.580\(3\).](#)) Shoreline regulations apply as they always do when projects are exempt from requirements of an SDP.

Some developments are built on land partially within shoreline jurisdiction and partially outside shoreline jurisdiction. If an SDP is required for land within shoreline jurisdiction, and a restoration project puts additional land within shoreline jurisdiction, the SDP would be required for all portions of the project within shoreline jurisdiction.

Property owners may request relief from local shoreline regulations

Property owners may request relief from shoreline regulations triggered by a restoration project, if the regulations would “preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.” Applications for relief should be filed with the local government. The application should be submitted as part of a required permit such as a shoreline permit, or a building permit if no shoreline permit is required.

After approval by the local government, the request is submitted to the Department of Ecology for review and approval. A 20-day public notice period is required prior to Ecology’s decision, unless the relief issue is addressed in a shoreline master program approved by Ecology. (See [RCW 90.58.580\(1\).](#)) Ecology must act within 30 days of the close of the public notice period or within 30 days of receipt of the proposal if public notice is not required.

The request must meet the following criteria:

- The proposed relief is the minimum necessary to relieve the hardship.
- After granting the proposed relief, there will be a net environmental benefit from the restoration project.
- Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the local shoreline master program.

Public notice is waived if the local shoreline program addresses the restoration project

The 20-day public notice requirement does not apply if the local shoreline program or shoreline restoration plan identifies the specific restoration project or a shoreline reach where “relief” is appropriate. The shoreline program or restoration plan needs to address the nature of the relief and why, when and how it is to be applied. (See [RCW 90.58.580\(2\).](#))

Linking regulatory relief and Shoreline Master Program comprehensive updates

In urbanized areas, there may be potential conflicts due to land use restrictions on property brought under shoreline jurisdiction because of habitat restoration projects. A shoreline program comprehensive update process may be a good time to evaluate potential problems with desired or existing development that could be affected by the landward extension of shoreline jurisdiction from anticipated shoreline restoration projects.

Property owners, environmental groups, tribes, agencies and others can be alerted to potential regulatory conflicts that may be created by anticipated shoreline restoration projects. These

groups can then come together on solutions that meet property owner needs while encouraging shoreline restoration. Adopting solutions into shoreline program provisions gives all parties assurance that their issues will be addressed in balancing regulatory relief with habitat restoration.

Local governments with shoreline jurisdiction in urban growth areas, including cities, should consider including a shoreline provision that addresses this regulatory relief for restoration projects.

Additional information

- [RCW 90.58.580](#)
- Contact [Ecology's regional planner](#) for your town, city or county.